

In the Supreme Court of the United States

OCTOBER TERM, 1968

No.

JOHN P. TRAYNOR AND JERRY C. OOSTING, DEPUTY
COMMISSIONERS, PETITIONERS

v.

WILLIAM H. JOHNSON, JULIA T. KLOSEK AND
ALBERT AVERY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of John P. Traynor and Jerry C. Oosting, Deputy Commissioners of the Department of Labor, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in these consolidated cases.¹

OPINION BELOW

The opinion of the court of appeals, sitting *en banc*, is set forth at pages 40a-64a of the petition in No. 528, this Term. It is not yet reported. The opinions of the

¹In No. 528, this Term, Nacirema Operating Company and Liberty Mutual Insurance Company, two of the appellees below, have also filed a petition for a writ of certiorari to review this judgment.

tort jurisdiction to cover pier-side injuries. In addition, the court held that the statutory standard that the injury occur upon the navigable waters of the United States was satisfied because small vessels are in fact able to navigate beneath the piers on which the accidents took place. The dissenting judges contended that the settled interpretation of the compensation statute is that its coverage depends upon the "situs" of the injury, and that pier-side injuries are excluded from coverage.

REASONS FOR GRANTING THE WRIT

As the court below recognized (Pet. App., No. 528, this Term, p. 56a), its decision conflicts with decisions of the Fifth and Ninth Circuits. See *Nicholson v. Calbeck*, 385 F. 2d 221 (C.A. 5), certiorari denied, 389 U.S. 1051; *Travelers Ins. Co. v. Shea*, 382 F.2d 344 (C.A. 5), certiorari denied *sub nom. McCullough v. Travelers Ins. Co.*, 389 U.S. 1050; *Houser v. O'Leary*, 383 F. 2d 730 (C.A. 9), certiorari denied, 390 U.S. 954.⁴

Because of this conflict, longshoremen sustaining identical pier-side injuries in different States, even though they are in the same compensation district, will have different remedies depending upon whether the State happens to be in the Fourth, Fifth, or Ninth Circuit. For example, while claims for injuries occurring in South Carolina and Georgia are handled by the same deputy commissioner, benefits will now be awarded for a pier-side injury occurring in South

⁴ On October 14, 1968, this Court denied a consolidated motion for leave to file a petition for rehearing in these three cases.

Carolina but denied when the accident occurs in Georgia (see 20 C.F.R. 31.2).

Furthermore, those injured in States located in other circuits must risk "the uncertainty, expense, and delay of fighting out in litigation" whether the circuit will permit or deny compensation under the Act. See *Calbeck v. Travelers Ins. Co.*, 370 U.S. 114, 121-122. Since pier-side injuries of longshoremen are not uncommon, the present state of the law thus will cause confusion in a large number of cases. The question is plainly one of general importance which only this Court can resolve.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

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OCTOBER 1968.